

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WISCONSIN

FRANK D. BERNARD,

Plaintiff,

v.

COMPLAINT

Civil Action No.

ANTHONY “T.J.” HAMILTON, individually,
and

CITY OF SHEBOYGAN, a body politic,

[Trial By Jury Demanded]

Defendants.

I. INTRODUCTION

1. This is a civil rights action brought by Frank D. Bernard, who was subjected to an unlawful search and seizure at the hands of a Sheboygan Police Officer during a detention on January 7, 2022 following an unreliable anonymous tip.

II. JURISDICTION

2. This action arises under 42 U.S.C. § 1983. Jurisdiction is conferred by 28 U.S.C. §§ 1331 and 1343(a)(3) and (4). Venue in this district is proper under 28 U.S.C. § 1391(b)(2) because the conduct giving rise to Plaintiff’s claims occurred in this judicial district.

III. PARTIES

3. Frank Bernard is an adult resident and citizen of the State of Wisconsin.

4. Anthony “T.J.” Hamilton is a police officer with the Sheboygan Police Department. He acted under color of law and within the scope of his employment as an employee of the City of Sheboygan, and he is sued in his individual capacity.

5. The City of Sheboygan is a body politic, organized under the laws of the State of Wisconsin, whose address is 828 Center Street, Suite 103, Sheboygan, WI 53081. The City of Sheboygan operates and controls the Sheboygan Police Department pursuant to its official policies, practices, and customs. The City of Sheboygan is liable for the acts and omissions described herein by Anthony “T.J.” Hamilton, which were committed within the scope of his respective employment. The City of Sheboygan is required by law, pursuant to Wis. Stat. § 895.46(1)(a), to pay and indemnify all judgments, including compensatory and punitive damages, attorney’s fees, and costs awarded against its officials, employees, and agents.

IV. STATEMENT OF FACTS

6. On January 7, 2022, at approximately 9:54 p.m., Sheboygan Countywide Crime Stoppers received an anonymous tip concerning allegations from an anonymous caller that, on January 6, the plaintiff, Frank Bernard, was allegedly “threatening wife and daughter” and “saying he is beat [sic] them right now” at a residence located at 4238 North 29th Street, Sheboygan, WI 53083.

7. The anonymous tip was forwarded from Crime Stoppers to the Sheboygan Police Department, and Sheboygan Police Department dispatched Defendant Hamilton to the address at approximately 10:02 p.m.

8. Defendant Hamilton arrived at the address at approximately 10:11 p.m. without his squad car’s sirens or lights activated.

9. Defendant Hamilton parked his squad car down the street from the address, and he approached the front door of the house on foot.

10. As Defendant Hamilton approached the house, it was apparent that the exterior lights were off and the interior of the house was mostly dark.

11. Defendant Hamilton knocked on the front door of the residence, and, after a few moments, Plaintiff Frank Bernard turned on the porch light and opened the front door while wearing boxer shorts and a t-shirt.

12. Defendant Hamilton introduced himself to Mr. Bernard as an officer with the Sheboygan Police Department, and Mr. Bernard introduced himself to the officer.

13. Defendant Hamilton asked Mr. Bernard “what’s going on tonight?” to which, Mr. Bernard responded “trying to go to sleep.”

14. Defendant Hamilton then informed Mr. Bernard that he was responding to a report that there was a disturbance, or was about to be a disturbance, at Mr. Bernard’s address.

15. As the two were talking, Defendant Hamilton said hello to Mr. Bernard’s fiancée, who had entered the front room of the home near the open front door.

16. Mr. Bernard’s fiancée said “hi” in return.

17. Mr. Bernard, confused by the appearance of Defendant Hamilton, informed Defendant Hamilton that “we’re going to bed.”

18. Defendant Hamilton responded by asking Mr. Bernard whether his wife was home, despite just greeting Mr. Bernard’s fiancée mere seconds earlier.

19. Mr. Bernard opened the door further and gestured towards his fiancée.

20. Officer Hamilton then stated that he was going to speak to Mr. Bernard’s “wife,” who was wearing just a bra and pajama pants, at which point Mr. Bernard asked the officer to leave the home.

21. Officer Hamilton responded, “or else what?” and mocked Mr. Bernard’s further objections.

22. Then, without warning, Defendant Hamilton assaulted Mr. Bernard by grabbing his wrist and pulling him out of his home onto the porch, slamming him into the exterior of his home, and proceeding to push Mr. Bernard into Mr. Bernard's home.

23. Defendant Hamilton then forcefully threw Mr. Bernard onto the ground while Mr. Bernard's fiancée cried and pleaded with Defendant Hamilton.

24. At this point in the interaction, another Sheboygan police officer arrived on the scene and joined Defendant Hamilton in physically seizing Mr. Bernard.

25. Soon thereafter, while controlling Mr. Bernard by holding him on his knees with both of his arms secured, Officer Hamilton struck Mr. Bernard in his left temple area with a knee strike.

26. At the time Defendant Hamilton delivered the knee strike to Mr. Bernard's left temple, Mr. Bernard was subdued by the two officers and had told them "I'm done."

27. The concentrated knee strike to the temple can amount to deadly force, and it was excessive and unjustified.

28. Mr. Bernard was then placed in handcuffs, while Defendant Hamilton pursued Mr. Bernard's fiancée into the bedroom of his home.

29. Defendant Hamilton, as well as several other Sheboygan police officers that were beginning to arrive, questioned Mr. Bernard's fiancée in the bedroom.

30. Mr. Bernard's handcuffs were eventually removed at approximately 10:22 p.m.

31. Finally, at 10:53 p.m., over forty minutes after the officers arrived, the officers left Mr. Bernard's home.

32. At no point did the officers provide any reasoning for their assault other than an anonymous Crime Stoppers tip.

33. Mr. Bernard was never threatening towards any of the officers and was never armed with any weapon.

V. STATEMENT OF CLAIMS

34. Defendant Hamilton violated the Fourth Amendment rights of Mr. Bernard by unlawfully entering his home and seizing Mr. Bernard with no warrant or other legal justification.

35. Defendant Hamilton violated the Fourth Amendment rights of Mr. Bernard by use of excessive and deadly force against a subdued and unarmed man.

36. The Fourth Amendment violations caused physical injury, pain and suffering, and other damages.

37. Because Defendant Hamilton was acting within the scope of his respective employment, the City of Sheboygan is liable for all damages, costs, and fees pursuant to Wis. Stat. § 895.46.

PRAYER FOR RELIEF

WHEREFORE, plaintiff respectfully demands a jury trial and prays that this Court:

1. Enter judgment for plaintiff awarding compensatory damages and punitive damages against Defendant Hamilton.

2. Award pre-judgment and post-judgment interest, together with costs, disbursements, and reasonable attorney's fees pursuant to 42 U.S.C. § 1988.

3. Award such other relief as may be just and equitable.

4. Enter judgment against the City of Sheboygan for indemnification pursuant to Wis. Stat. § 895.46

Dated at Milwaukee, Wisconsin this 27th day of July, 2023.

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